



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

September 21, 1981

In Reply

Refer to: B-200671(MGB)

Mr. James M. Peirce
President
National Federation of Federal
Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Dear Mr. Peirce:

This is in answer to your letter of September 26, 1980, your reference 64-RE-36, requesting a decision on the entitlement of Harold B. Amick to grade and pay retention under the Civil Service Reform Act. Since the record is not complete in this case, we are unable to render a decision. However, we are providing you and the agency (by copy of this letter) with the following information concerning the entitlement of Mr. Amick.

Mr. Amick seeks grade and pay retention under the retroactive provisions of section 801(b) of the Civil Service Reform Act, Pub. L. No. 95-454, October 13, 1978, 92 Stat. 1218, 5 U.S.C. § 5362. There are three issues to be considered: (1) whether Mr. Amick's reduction in grade occurred within the time period prescribed by the retroactive provisions of section 801(b)(1)(A); (2) whether the fact that his appointment after the reduction in force was temporary, rather than permanent, affects his eligibility; and (3) whether an employee separated in a reduction in force and offered an appointment of lesser tenure is considered to be "placed as a result of reduction-in-force procedures" within the meaning of section 5362.

The facts are as follows. Mr. Amick had been employed as a WG-11, step 5, crane operator at the rate of \$8.44 per hour (\$17,555.20 per year). Effective January 21, 1978, he was separated by a

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reduction in force. Effective January 22, 1978, he was given a temporary appointment as a GS-4, step 10, guard at the rate of \$11,575 per year. On October 1, 1978, this appointment was converted to a career appointment at the same grade and step. Effective September 2, 1979, he was promoted to lead guard, GS-5, step 10, at the rate of \$13,657 per year.

Based upon these facts, the first issue concerning whether Mr. Amick's reduction in grade occurred within the time period prescribed by section 801(b)(1)(A) can be resolved in favor of Mr. Amick. Section 801(b)(1)(A) gives retroactive coverage to employees whose reduction in grade occurred on or after January 1, 1977. Since Mr. Amick's reduction in force occurred on January 21, 1978, that action is within the prescribed time period. See also 5 C.F.R. § 536.217 (1980); 5 C.F.R. § 536.306 as amended, effective January 29, 1981, 45 Fed. Reg. 85659, December 10, 1980.

The second issue of whether the temporary nature of his subsequent appointment affects his eligibility for grade and pay retention can also be resolved in Mr. Amick's favor. While it is clear from the statute and implementing regulations that an employee separated from a temporary appointment in a reduction in force is not entitled to grade and pay retention, nothing in the statute or regulations suggests that a temporary appointment following a reduction in force affects an employee's eligibility for such benefits. 5 C.F.R. § 536.203 (1980); 5 C.F.R. § 536.102, as amended effective January 29, 1981, 45 Fed. Reg. 85656 (December 30, 1980). Accordingly, since Mr. Amick's appointment when the reduction in force occurred was on other than a temporary or term basis, the fact that he was given a temporary appointment after the reduction in force would not disqualify him for grade and pay retention if he were otherwise eligible. The Office of Personnel Management (OPM), which has authority to regulate in this area (5 U.S.C. § 5365), concurs in this view.

The third issue is whether an employee separated in a reduction in force and offered an appointment of lesser tenure is considered to be "placed as a result of reduction-in-force procedures" for the purpose of section 5362. Since the implementing regulations do not specifically address this issue, we requested the views of OPM. Copies of our request and OPM's response were served upon the parties and neither party provided comments. OPM advised that if the offer of the position to which Mr. Amick was temporarily appointed was made at the initiative of management and was made in writing, Mr. Amick would be considered to have been placed as a result of reduction in force procedures.

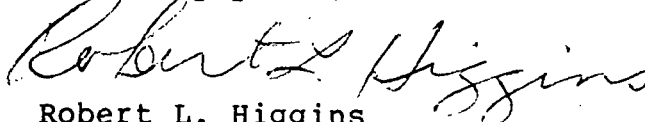
The record in this case does not show whether the two conditions set forth by OPM were met, that is, whether the offer of the temporary appointment on January 22, 1978, was made in writing and at management's initiative. However, after receipt of a copy of our request to OPM for advice, the agency did advise us that Mr. Amick had been granted grade and pay retention and that the personnel actions had been processed on December 19, 1980. Upon receipt of this information, we asked the agency for a full report of the basis for such action. NFFE was served with a copy of our request. To date, we have received no comments or response from either party. As noted above, both parties were also served with a copy of OPM's reply, but again made no comment or response.

Under these circumstances, we are unable to determine whether Mr. Amick's reduction in grade met the requirements set forth by OPM and, therefore, we are not rendering a decision. However, rather than delaying the matter further, we are, by copy of this letter, instructing the agency to determine whether the offer of the temporary appointment on January 22, 1978, was made in writing and at management's initiative as required by OPM. If these conditions have been met,

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Mr. Amick is entitled to receive grade and pay retention. However, if these conditions have not been complied with, Mr. Amick's entitlement is questionable.

Sincerely yours,



Robert L. Higgins
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